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**CHAPTER 407**  
**DEPARTMENT OF HUMAN SERVICES,**  
**ADMINISTRATIVE SERVICES DIVISION AND DIRECTOR'S OFFICE**

**DIVISION 7**  
**CRIMINAL RECORDS AND ABUSE CHECKS**

**Abuse Check Rules for Department Employees and Volunteers**

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**TEMPORARY RULES**  
**EFFECTIVE 10/1/2009 – 3/30/2010**

1   **407-007-0400**           **Definitions**

2  
3   As used in OAR 407-007-400 to 407-007-0460, unless the context of the rule requires otherwise,  
4   the following definitions apply:

- 5  
6   (1)   “**ABUSE**” has the meaning given it in the Department administrative rules corresponding  
7       to the setting in which the abuse was alleged or investigated.  
8  
9   (2)   “**ABUSE CHECK**” means obtaining and reviewing abuse allegations, abuse  
10       investigation reports, and associated exhibits and documents for the purpose of screening  
11       subject individuals as allowed by ORS 409.027.  
12  
13   (3)   “**ABUSE INVESTIGATION REPORT**” means a written report completed after an  
14       investigation into suspected abuse and retained by the Department pursuant to ORS  
15       124.085, 419B.030 or 430.757, or a similar report filed in another state.  
16  
17   (4)   “**APPROVED**” means that a subject individual, following a fitness determination, is fit  
18       to work, volunteer, be employed, or otherwise perform in a position where the subject  
19       individual may provide care.  
20  
21   (5)   “**CARE**” is defined as treatment, education, training, instruction, placement services,  
22       recreational opportunities or case management, supervision of such services for clients of  
23       the Department, or Department administration and support services for clients of the  
24       Department.  
25  
26   (6)   “**CLOSED CASE**” means an abuse check that has been closed without a fitness  
27       determination.  
28  
29   (7)   “**DENIED**” means that a subject individual, following a fitness determination including a  
30       weighing test, is not fit to work, volunteer, be employed, or otherwise perform services in  
31       positions covered by these rules.  
32  
33   (8)   “**DEPARTMENT**” means the Department of Human Services (DHS).  
34  
35   (9)   “**DIRECTOR**” means the Director of the Department or the Director’s designee.  
36  
37   (10)  “**FITNESS DETERMINATION**” means the outcome of an abuse check and, if  
38       necessary, a weighing test. Outcomes are approved or denied.  
39  
40   (11)  “**FOUNDED OR SUBSTANTIATED**” has the meanings given these terms in the  
41       Department administrative rules corresponding to the setting in which the abuse was  
42       alleged or investigated.  
43  
44   (12)  “**OFFICE OF HUMAN RESOURCES**” means the Department’s Office of Human  
45       Resources in the Department’s Administrative Services Division.  
46

TEMPORARY ADOPT

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1 (13) **“POTENTIALLY DISQUALIFYING ABUSE”** means:  
2

3 (a) The finding of an abuse investigation report is founded or substantiated; and  
4

5 (b) The subject individual is determined to have been responsible for the abuse.  
6

7 (14) **“SUBJECT INDIVIDUAL,”** means an individual who is:  
8

9 (a) An employee. Employees include:  
10

11 (A) An individual who seeks to be employed by the Department to provide  
12 care or a Department Jobs Plus client who seeks placement at a  
13 Department site; or  
14

15 (B) An individual who is currently employed by the Department to provide  
16 care or a Department Jobs Plus client who is currently placed at a  
17 Department site.  
18

19 (b) A volunteer. Volunteers include:  
20

21 (A) An individual or student, who seeks to be a volunteer to provide care on  
22 behalf of the Department;  
23

24 (B) A Department Work Experience client who seeks placement as a volunteer  
25 at a Department site;  
26

27 (C) An individual or student currently volunteering to provide care on behalf  
28 of the Department, over whom the Department has direction and control;  
29 or  
30

31 (D) A Department Work Experience client who is placed at a Department site.  
32

33 (16) **“WEIGHING TEST”** means a process carried out by the Department in which available  
34 information is considered in making a fitness determination. A weighing test is only  
35 conducted under these rules when a subject individual has potentially disqualifying  
36 abuse.  
37

38 *Stat. Auth.: ORS 409.027 & 409.050*

39 *Stats. Implemented: ORS 409.025, 409.027 & 409.050*  
40  
41

42 **407-007-0410 Purpose**  
43

44 (1) **ABUSE CHECK OF DEPARTMENT EMPLOYEES AND VOLUNTEERS.** The  
45 purpose of these rules, OAR 407-007-0400 to 407-007-0460, is to provide for the abuse

1 check of Department employees, Department volunteers, or persons offered employment  
2 or placement by the Department to determine if they are fit to provide care.  
3

4 (2) **CONFIDENTIALITY.** To protect the confidentiality of information contained in abuse  
5 investigation reports otherwise protected under these rules, abuse investigation reports  
6 may be used jointly among the organizational units under the guidance of the Director for  
7 screening subject individuals pursuant to ORS 409.027 and OAR 407-007-0400 to 407-  
8 007-0460. Such reports shall be maintained as confidential pursuant to ORS 409.027 and  
9 other applicable state and federal laws.

10  
11 (a) Abuse investigation reports used for screening subject individuals must be used as  
12 such for the purpose of protecting vulnerable children and adults served by the  
13 Department from abuse, but may not be used for decisions directly affecting  
14 vulnerable individuals unless the vulnerable individual is also a subject individual  
15 under these rules.

16  
17 (b) Abuse investigation reports used for screening subject individuals may not be  
18 disclosed to any other person or entity outside of the Department without a  
19 protective order limiting further disclosure of the confidential information.  
20

21 (3) **RULE APPLICABILITY.** Although criminal records checks may occur concurrently  
22 with abuse checks performed under these rules and may share similar processes, the  
23 abuse check process is separate and distinct from the criminal records checks that may be  
24 performed under OAR 407-007-0000 to 407-007-0100.  
25

26 *Stat. Auth.: ORS 409.027 & 409.050*

27 *Stats. Implemented: ORS 409.027 & 409.050*  
28  
29

30 **407-007-0420 Reporting Abuse Allegations Required**

31  
32 (1) **SUBJECT INDIVIDUALS COVERED BY THIS RULE.** This rule applies to any  
33 subject individual who is:

34  
35 (a) A current Department employee;

36  
37 (b) A current Department volunteer; or

38  
39 (c) An individual seeking Department employment or volunteer placement who has  
40 been offered Department employment or volunteer placement pending the  
41 completion of the abuse check process.  
42

43 (2) **REPORT REQUIRED.** A subject individual shall notify the Office of Human  
44 Resources within five calendar days of being notified that he or she has been identified as  
45 an alleged perpetrator, reported perpetrator, or accused person in an abuse investigation.  
46

1 *Stat. Auth.: ORS 409.027 & 409.050*  
2 *Stats. Implemented: ORS 409.027 & 409.050*  
3  
4

5 **407-007-0430 Applicants to the Department for Employment or Volunteer Position**

6  
7 (1) **SUBJECT INDIVIDUALS COVERED BY THIS RULE.** Subject to any applicable  
8 collective bargaining agreements, this rule applies to any subject individual who is:  
9

- 10 (a) Offered employment or volunteer placement with the Department;  
11  
12 (b) Offered a change in employment or volunteer placement within the Department.  
13

14 (2) **WHEN ABUSE CHECK IS REQUIRED.** The Department may require a subject  
15 individual to have an abuse check in the following circumstances:  
16

- 17 (a) A subject individual is offered employment or a volunteer placement with the  
18 Department.  
19  
20 (b) A subject individual is currently employed by or volunteering with the  
21 Department and is offered a new position within the Department. A change in a  
22 position requiring an abuse check may be due but not limited to promotion,  
23 transfer, demotion, re-employment, job rotation, developmental assignment,  
24 restoration, bumping, or recall. In order for the check to be required, there must  
25 be, as determined by the Office of Human Resources, either:  
26  
27 (A) A significant change in position duties or responsibilities; or  
28  
29 (B) A change in position classification.  
30

31 (3) **OBTAINING INFORMATION.**

- 32  
33 (a) Using identifying information submitted on the Department's Background Check  
34 Request form (DHS 301HR), the Department may conduct an abuse check to  
35 determine if the subject individual has potentially disqualifying abuse.  
36  
37 (b) In order to complete an abuse check and fitness determination, the Department  
38 may require additional information from the subject individual including but not  
39 limited to additional background information or documentation regarding  
40 circumstances since the abuse occurred.  
41  
42 (c) If a subject individual is a represented Department employee, the process for  
43 obtaining additional information through investigatory interviews shall adhere to  
44 collective bargaining agreements on investigatory interviews.  
45

- 1 (4) **START DATE FOR EMPLOYMENT OR PLACEMENT.** The Department may not  
2 determine a start date for a subject individual until the completion of an abuse check and  
3 a fitness determination of approval.  
4
- 5 (5) **WEIGHING TEST.** If a subject individual has potentially disqualifying abuse, the  
6 Department shall conduct a weighing test in order to make a fitness determination.  
7 Factors to consider in a weighing test include but are not limited to:  
8
- 9 (a) The details regarding the abuse including but not limited to:  
10  
11 (A) Circumstances leading to the incident of abuse;  
12  
13 (B) The nature or type of abuse; and  
14  
15 (C) Other information gathered during the scope of the abuse investigation.  
16
- 17 (b) The date of abuse incident and abuse investigation, and the age of the subject  
18 individual at the time of the abuse.  
19
- 20 (c) The quality of the abuse investigation including, if applicable, any exhibits and  
21 related documents with consideration to completeness, objectivity, and  
22 sufficiency.  
23
- 24 (d) Due process provided to the subject individual after the abuse investigation.  
25
- 26 (e) Required action resulting from the founded or substantiated abuse, including but  
27 not limited to training, counseling, corrective or disciplinary action, and the  
28 subject individual's compliance.  
29
- 30 (f) Circumstances related to the subject individual including but not limited to work  
31 history, education history, and other personal information provided by the subject  
32 individual.  
33
- 34 (g) Changes in circumstances subsequent to the potentially disqualifying abuse.  
35
- 36 (h) The relevancy of the abuse to the position the subject individual is seeking.  
37
- 38 (6) **FITNESS DETERMINATION.** After an abuse check, the Department shall complete  
39 the fitness determination.  
40
- 41 (a) **Approved.** The Department may approve a subject individual if:  
42  
43 (A) The subject individual has no potentially disqualifying abuse; or  
44  
45 (B) The subject individual has potentially disqualifying abuse but, after a  
46 weighing test, the Department determines that more likely than not the

1 subject individual poses no risk to the Department, its clients, or  
2 vulnerable persons.  
3

- 4 (b) **Denied.** The Department shall deny a subject individual who has potentially  
5 disqualifying abuse and, after a weighing test, the Department determines that  
6 more likely than not the subject individual poses a risk to the Department, its  
7 clients, or vulnerable individuals.  
8

9 (7) **CLOSED CASE.**

- 10  
11 (a) If the subject individual discontinues the application or fails to cooperate with the  
12 abuse check process, the application is considered incomplete and shall be closed.  
13  
14 (b) When the application is closed without a final fitness determination, the subject  
15 individual does not have a right to contest the closure.  
16

17 (8) **NOTICE TO SUBJECT INDIVIDUAL.** Upon completion of a fitness determination or  
18 in a closed case, the Department shall provide written notice to the subject individual.  
19 The notice shall:

- 20  
21 (a) Be in a Department approved format;  
22  
23 (b) Include an effective date of action on the notice; and  
24  
25 (c) For an outcome of denied:  
26  
27 (A) Include the reasons for the denial; and  
28  
29 (B) Include information regarding appeal rights. A statement shall be included  
30 that indicates that the notice becomes a final order in the event of a  
31 withdrawal during the contested case hearing process or a failure to appear  
32 at the contested case hearing.  
33

34 (9) **TERMINATION FOLLOWING DENIAL OR CLOSED CASE.** When a subject  
35 individual is denied or a case is closed, the individual may not work, volunteer, be  
36 employed, or otherwise perform in the position for which the subject individual is  
37 seeking. If a current Department employee or volunteer is denied, the Office of Human  
38 Resources shall determine if the subject individual may be able to continue in the current  
39 position from which the subject individual is seeking to change.  
40

- 41 (a) For Department employees, if disciplinary action up to and including dismissal, is  
42 appropriate, the action shall be taken in accordance with:  
43  
44 (A) Relevant collective bargaining contractual provisions;  
45

- 1 (B) Statutory provisions for unrepresented or management services  
2 employees; or  
3
- 4 (C) Relevant Department or statewide policies or procedures.  
5
- 6 (b) For subject individuals who are current volunteers or current Work Experience  
7 clients, a denial or closed case shall result in immediate dismissal.  
8
- 9 (10) **DOCUMENTATION.** Fitness determinations shall be documented in writing and  
10 include all necessary details including but not limited to the potentially disqualifying  
11 abuse, the weighing test, or the reasons for a closed case.  
12
- 13 (11) **NO BINDING PRECEDENT.** The Department shall make new fitness determinations  
14 for each application. The outcome of previous fitness determinations does not ensure the  
15 same outcome of a new fitness determination.  
16
- 17 (12) **CONTESTING A FITNESS DETERMINATION.** Only subject individuals offered  
18 employment or a Jobs Plus position may contest the fitness determination.  
19
- 20 (a) The contested case hearing process, pursuant to ORS chapter 183 and OAR 407-  
21 007-0080, shall proceed if the subject individual requests a contested case  
22 hearing. Subject individuals must request a hearing within 15 calendar days after  
23 the effective date of action listed on the notice of fitness determination.  
24
- 25 (b) The subject individual's hearing rights pertain to the action of denial of  
26 employment or placement, not the outcome of the abuse investigation.  
27
- 28 (c) The only remedy that may be awarded is a fitness determination that the subject  
29 individual is approved or denied. Under no circumstances shall the Department be  
30 required to place a subject individual in any position, nor shall the Department be  
31 required to accept services or enter into a contractual agreement with a subject  
32 individual.  
33
- 34 (d) Subject individuals may not have access to confidential information contained in  
35 abuse investigation reports or other records collected or developed during the  
36 abuse check process without a protective order limiting further disclosure of the  
37 information.  
38
- 39 (A) A protective order issued pursuant to this section must be issued by an  
40 administrative law judge as provided for in OAR 137-003-0570(8) or by a  
41 court of law.  
42
- 43 (B) In conjunction with a protective order issued pursuant to this section,  
44 individually identifying information relating to clients, witnesses, and  
45 other persons identified in abuse investigation reports or other records  
46 collected or developed during the abuse check process shall be redacted

1 prior to disclosure, except for the information identifying the subject  
2 individual.  
3

- 4 (13) **RECHECKS ON VOLUNTEERS.** Subject individuals in volunteer or Work  
5 Experience placements must have a new abuse check every three years from the date of  
6 placement.  
7

8 *Stat. Auth.: ORS 409.027 & 409.050*

9 *Stats. Implemented: ORS 409.010 & 409.027*  
10  
11

12 **407-007-0440 Current Employees of the Department**

- 13  
14 (1) **SUBJECT INDIVIDUALS COVERED BY THIS RULE.** This rule applies to any  
15 subject individual who is a current Department employee.  
16

- 17 (2) **ABUSE ALLEGATION DURING EMPLOYMENT.** If a subject individual is  
18 identified as an alleged perpetrator, reported perpetrator, or accused person in an abuse  
19 investigation, all relevant abuse investigation and licensing rules shall apply.  
20

- 21 (3) **OFFICE OF HUMAN RESOURCES REVIEW OF POTENTIALLY**  
22 **DISQUALIFYING ABUSE.**  
23

24 (a) If a current subject individual is identified as an alleged perpetrator, reported  
25 perpetrator, or accused person in an abuse investigation, the Office of Human  
26 Resources may initiate an investigation during or following the investigation of  
27 the alleged abuse to determine whether to take any action, up to and including  
28 dismissal or removal from employment.  
29

30 (b) If the abuse investigation results in potentially disqualifying abuse, the Office of  
31 Human Resources shall initiate an investigation which may include conducting a  
32 weighing test as described in OAR 407-007-0430(5). The purpose of the  
33 investigation is to determine whether any action, up to and including dismissal or  
34 removal from employment, is justified.  
35

36 (c) If the Office of Human Resources learns of potentially disqualifying abuse from  
37 previous investigations that may be inconsistent with a subject individual's  
38 current position, the Office of Human Resources may initiate an investigation  
39 which may include conducting a weighing test as described in OAR 407-007-  
40 0430(5). The purpose of the investigation is to determine whether any action, up  
41 to and including dismissal or removal from employment, is justified.  
42

43 (d) For Department employees, if disciplinary action up to and including dismissal, is  
44 appropriate, the action shall be taken in accordance with:

- 45 (A) Relevant collective bargaining agreements;  
46

1  
2 (B) Statutory provisions for unrepresented or management services  
3 employees; or  
4

5 (C) Relevant Department or statewide policies or procedures.  
6

7 (4) **OTHER RELATED PROCEEDINGS.** A pending related action, such as a civil,  
8 criminal, juvenile, or administrative proceeding in which the allegations of abuse are at  
9 issue shall not automatically be grounds for the subject individual to seek to detain or  
10 stay either the review of the founded or substantiated disposition or any resulting  
11 disciplinary action. The Department may detain or stay either the review of the founded  
12 or substantiated abuse disposition or any resulting disciplinary action based on pending  
13 related action such as a civil, criminal, juvenile, or administrative proceeding in which  
14 the allegations of abuse are at issue.  
15

16 *Stat. Auth.: ORS 409.027 & 409.050*

17 *Stats. Implemented: ORS 409.027 & 409.050*  
18  
19

20 **407-007-0450 Current Volunteers of the Department**

21  
22 (1) **Subject individuals covered by this rule.** This rule applies to any subject individual  
23 who is a current volunteer.  
24

25 (2) **Duties during abuse investigation and review.** If a current subject individual is  
26 identified as an alleged perpetrator, reported perpetrator, or accused person in an abuse  
27 investigation, the Office of Human Resources may remove the subject individual from  
28 placement and duties at any time during the investigation or any subsequent review.  
29

30 (3) **PLACEMENT AFTER ABUSE INVESTIGATION.** If removed from the placement,  
31 the subject individual may reapply for a placement under OAR 407-007-0430.  
32

33 *Stat. Auth.: ORS 409.027, 409.050*

34 *Stats. Implemented: ORS 409.027 & 409.050*  
35  
36

37 **407-007-0460 Confidentiality**

38  
39 All abuse information and other records collected or developed during the abuse check process  
40 shall be kept confidential and disseminated only on a need-to-know basis as permitted by  
41 applicable Oregon statutes and Oregon administrative rules.  
42

43 *Stat. Auth.: ORS 409.027 & 409.050*

44 *Stats. Implemented: ORS 409.027 & 409.050*